

The State of New Hampshire

Opinion

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September 4, 1975

Mr. Robert E. Whalen
Deputy Commissioner
Department of Safety
John O. Morton Building
85 Loudon Road
Concord, New Hampshire 03301

Dear Mr. Whalen:

You have asked by your letter of August 26, 1975 whether it would be proper for the Department of Safety to establish an "auxiliary force of volunteers who would act on a volunteer basis on the various lakes and ponds throughout the state as a supplement to our present force of temporary and part-time Boat Inspectors". Although your letter indicates that such a volunteer force would be extremely helpful in addressing a serious shortage of enforcement personnel, our opinion is that such a force cannot be created in the absence of statutory authorization for the same.

The delegation of enforcement powers by the State to an auxiliary force such as you suggest involves a delegation of the State's police power, a sensitive undertaking which must rest upon specific enabling legislation. While the provisions of RSA 270:1 and RSA 270:11 authorize the Director of Safety Services or his duly authorized representative to supervise the safety of navigation on the State's public waters, there is no language which specifically provides for the creation of an auxiliary force outside of the state classified system, nor is there any language from which the creation of such a force may fairly be inferred. Furthermore, the complex questions of liability and the sensitive

Mr. Whalen

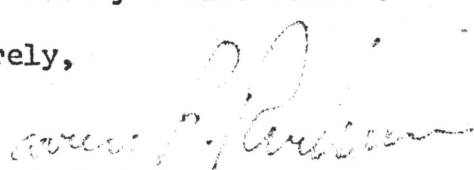
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nature of enforcement in general require that these statutes be strictly construed. As you have pointed out in your letter, our Legislature is well aware of what it takes to create an auxiliary force such as you have in mind since it has created a similar force for the State Police. RSA 106-B:19-25 (supp).

It appears that the time has arrived for the Legislature to address the issue which you have raised.

Sincerely,


Warren B. Rudman
Attorney General


John L. Ahlgren
Assistant Attorney General

JLA/tlr